IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CIVIL APPELLATE JURISDICTION

INCOME TAX APPEAL NO. 471 OF 2017

Pr. CIT-2, Kolhapur
The Pr. Commissioner of Income Tax-2 … Appellant
V/s.
B. T. Patil & Sons Belgaum Construction
Pvt. Ltd. … Respondent

WITH
INCOME TAX APPEAL NO. 646 OF 2017

Pr. CIT-2, Kolhapur
The Pr. Commissioner of Income Tax-2 … Appellant
V/s.
B. T. Patil & Sons Belgaum Construction
Pvt. Ltd. … Respondent

WITH
INCOME TAX APPEAL NO. 1547 OF 2017

Pr. CIT-2, Kolhapur
The Pr. Commissioner of Income Tax-2 … Appellant
V/s.
B. T. Patil & Sons Belgaum Construction
Pvt. Ltd. … Respondent

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Ms. Smita Thakur for the Appellant / Revenue.

Mr. Satish Mody for the Respondent / Assessee.

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CORAM : ABHAY AHUJA &
NEERAJ P. DHOTE, JJ.

DATE : 29th OCTOBER, 2026

ORAL JUDGMENT.: (PER ABHAY AHUJA, J.)

1. These three Appeals filed by the Appellant-Revenue under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as the "**said Act**") for Assessment Years 2008-09, 2010-11 and 2011-12 have been admitted on 18th June 2019, 18th June 2019, and 15th January 2020, respectively, on the following substantial question of law:

> "Whether the respondent-assessee fulfills the requirement stipulated in Section 80-IA(4) of the Income Tax Act, 1961 once the conclusion reached is that it is contractor and not developer as stated in the sub-Section?"

2. The Assessing Officer in all the three Appeals disallowed the claim of the assessee for deduction under Section 80-IA(4) of the said Act, on the ground that the assessee was not a developer, but a works contractor.

3. Against the order of the Assessing Officer, an Appeal came to be filed before the Commissioner of Income Tax (Appeals), and the Commissioner of Income Tax (Appeals), after having considered the facts, observed that it has not been denied that the assessee has developed the infrastructure facility as per the agreement with the State Government and that the scope of the assessee's work was undertaking of preliminary and detailed site survey of the scheme, formulation of designs - considering various alternatives based on survey, parameters specified and need of beneficiaries, preparation of intricate designs

involving hydraulic, civil, automation aspects, scrutinising the designs and obtaining approval from the concerned Government department, taking over lands either from the Government, local authority or to acquire lands from the landowners as per terms of the agreement, obtaining the statutory permissions, then undertaking the development of the project, construction and execution including procurement of material, construction, installation of mechanical, electrical and instrumentation components, co-ordination between all activities, so that the project is on smooth track, erection and commissioning of the entire project, undertaking of all the risks involved in the project, inverting its own funds and also borrowed funds for the development of the project and thereafter recording the same from the client in form of R.A. bills. It has been observed by the CIT (Appeals) that after completion of project, the assessee has undertaken maintenance of the project till defect liability period as prescribed in the tender and finally after completion of the project in all respects, the project is handed over to Government / local authority / statutory authority. It has also been observed that the assessee has demonstrated that it has undertaken risks in terms of deployment of technical personnel, plant and machinery, technical know-how, expertise and financial resources. The learned CIT (Appeals) has also observed that due to the fact that the contracts for the project undertaken by the assessee involve design,

development, and construction of shafts, tunnels, barrages canals, gates, earthen dams, lift irrigations systems, erection and maintenance of cranes, hydraulic hoists; financial involvement including furnishing security deposit; and defect correction in liability period, then as held in various decisions cited above, the contracts entered into by the assessee cannot be called simple works contract or so as to deny the deduction available under Section 80-IA(4). The order of the CIT (Appeals) finds that the assessee has claimed deduction under Section 80-IA(4) in respect of project undertaken due to a valid contract entered into with the State Government and also that assessee was required to bring in the finance, technical expertise and material and adhere to the quality requirements irrespective of cost. In completion of the project the assessee utilized its own funds, its expertise, its employees and took responsibility of developing infrastructure facility.

4. The CIT (Appeals) also observed that the various Benches of the Income Tax Appellate Tribunal ("**ITAT**"), including the jurisdictional Tribunal, had observed that the developer of the infrastructure facility cannot be denied the benefit of deduction available under Section 80-IA(4) of the said Act, and followed the decisions of the ITAT in the assessee's own case for Assessment Years 2000-2001 and 2001-2002. Although, it was observed that benefit of Section 80-IA(4) is not

available to a works contractor, however, answering the issue as to whether or not the Appellant was a developer, it was observed that the Appellant was in no uncertain terms a developer and that since a similar view had also been taken in the Appellant's own case for Assessment Years 2007-2008 to 2010-2011, following the said decisions, the CIT (Appeals) allowed the claim of the Appellant in respect of the claims with respect to Section 80-IA(4) of the said Act.

5. Aggrieved by the said order, the Revenue preferred Appeals to the Tribunal, and the Tribunal, by orders dated 9th March, 2016 and 25th November, 2016 and relying on the decisions in the case of the same assessee for the assessment years 2000-2001 and 2001-2002, dismissed the Appeals filed by the Revenue.

6. It is against the orders of the Tribunal that these Appeals have been filed by the Revenue under Section 260A of the said Act.

7. When the matter is called out, Ms. Thakur, learned Counsel appearing for the Appellant-Revenue, has submitted that the only issue that this Court would need to address is whether or not the Respondent-assessee is a developer or a sub-contractor, and that is why the question of law was framed by this Court and the Appeals admitted.

8. Drawing this Court's attention to paragraph No. 2 of the

assessment order, the learned Counsel for the Revenue submits that nowhere there is a finding that the assessee was a developer, and therefore, the assessee is not eligible for deduction under Section 80-IA(4) of the said Act. Ms. Thakur, submits that, in fact, the Assessing Officer has observed that the assessee is a civil contractor engaged in the activities of executing contracts for civil work, and if the intent of the provision under Section 80-IA(4) of the said Act is to be seen, it is apparent that the whole intent was to provide incentives for companies who undertake investments for bringing into existence a new infrastructure facility, and that the benefit of the said deduction can be claimed only by the person who implements the project, and not a sub-contractor or a works contractor who only undertake business risk, but not entrepreneurial and investment risk.

9. The learned Counsel for the Revenue submits that it has been clarified by Circular No. 3 of 2008 dated 12th March 2008 that the provisions of Section 80-IA of the said Act shall not apply to a person who executes a works contract entered into with the undertaking or enterprise referred to in the said section. Ms. Thakur submits that where a person makes the investment and himself executes the development work, i.e., carries out the civil construction work, he will be eligible for the tax benefit, and not a person who enters into a contract with

another person for executing works contract. Ms. Thakur submits that therefore the Appeals deserve to be allowed as the assessee is not a developer, but a contractor/sub-contractor.

10. On the other hand, Mr. Mody, learned Counsel appearing for the Respondent-assessee in all the three Appeals, disputes this factual position and submits that although the Tribunal has relied upon the orders of the Tribunal with respect to the earlier years, viz., 2000-2001 and 2001-2002, however, the facts in the case of the assessee for the years under consideration are slightly different as the assessee has received direct work orders from the State Government, and therefore the assessee's case for these years is even better as there is no question of the assessee company being a sub-contractor or having entered into a tripartite agreement with the developer and the government authorities, which was also approved by the Tribunal as having qualified for deduction under Section 80-IA(4) of the said Act.

11. In support, Mr. Mody has tendered across the bar the following four work orders:

(i) Work Order No. KCD 1/AB VII/3173, dated 17th November, 2004 from the Executive Engineer, Koyna Construction Division No. 1, Koynanagar, with respect to supply and erection of embedded parts, hydraulic gates and ancillary equipments including design of hydraulic

gates for extension of HRT-KHEP Stage IV;

(ii) Work Order No. KCD 1/AB VII/T/745, dated 17th March, 2005 from the Executive Engineer, Koyna Construction Division No. 1, Koynanagar, with respect to the supply and erection of EOT Crane and electrically operated hydraulic hoists and ancillary equipments including design of hoists and ancillary equipments for extension of HRT-KHEP State IV;

(iii) Work Order No. KCD-2/AB/AR/630, dated 23rd March 2006 from the Executive Engineer, Koyna Construction Division No. 2, Alore (Chiplun), with respect to the excavation and construction of shafts and tunnels; and

(iv) Work Order (Outward) No. 182/NEEWLI/KARYARAMBA/07, dated 22nd January, 2007 from the Executive Engineer, Goshikhurd Right Bank Canal Division, Brahmapuri, District Chandrapur, with respect to the Godazari Branch Canal Ch. No.13335 Mtr. to 19120 Mtr. cut and cover and construction of tunnel work at Gosikhurd, Brahmpuri, Dist Chandrapur.

12. The learned Counsel for the Respondent-assessee submits that the Assessing Officer, in the assessment orders, has nowhere disputed the aforementioned works undertaken for the development of the infrastructure facilities in respect of the projects mentioned above, and forms part of the assessment orders.

13. Ms. Thakur, learned Counsel appearing for the Appellant-Revenue, on instructions, has confirmed that the aforesaid documents are, in fact, part of the assessment records of the assessee for the assessment years under consideration.

14. It therefore cannot be disputed that the Respondent-assessee has itself undertaken the development of infrastructure facilities in the projects for which the claims for deduction under Section 80-IA(4) of the said Act are being made.

15. Section 80-IA(4) of the Income Tax Act, 1961, as relevant for the purposes of the assessment years under consideration, is usefully quoted as under:

> "**Section 80-IA(4)**
> (1) to (3) ...
> (4) This Section applies to—
> (i) any enterprise carrying on the business of (i) developing or (ii) operating and maintaining or (iii) developing, operating and maintaining any infrastructure facility which fulfills all the following conditions, namely :—
> (a) it is owned by a company registered in India or by a consortium of such companies or by an authority or a board or a corporation or any other body established or constituted under any Central or State Act;
> (b) it has entered into an agreement with the Central Government or a State Government or a local authority or any other statutory body for (i) developing or (ii) operating and maintaining or (iii) developing, operating and maintaining a new infrastructure facility;
> (c) it has started or starts operating and maintaining the infrastructure facility on or after the 1st day of April, 1995 :
>
> **Provided** that where an infrastructure facility is transferred on or after the 1st day of April, 1999 by an enterprise which developed such infrastructure facility (hereafter referred to in this section as the

transferor enterprise) to another enterprise (hereafter in this section referred to as the transferee enterprise) for the purpose of operating and maintaining the infrastructure facility on its behalf in accordance with the agreement with the Central Government, State Government, local authority or statutory body, the provisions of this section shall apply to the transferee enterprise as if it were the enterprise to which this clause applies and the deduction from profits and gains would be available to such transferee enterprise for the unexpired period during which the transferor enterprise would have been entitled to the deduction, if the transfer had not taken place.

Provided further that nothing contained in this section shall apply to any enterprise which starts the development or operation and maintenance of the infrastructure facility on or after the 1st day of April, 2017.

Explanation.— For the purposes of this clause, infrastructure facility means—

(a) a road including toll road, a bridge or a rail system;

(b) a highway project including housing or other activities being an integral part of the highway project;

(c) a water supply project, water treatment system, irrigation project, sanitation and sewerage system or solid waste management system;

(d) a port, airport, inland waterway, inland port or navigational channel in the sea;"

(emphasis supplied)

16. It is clear from the aforesaid provision that this section applies to any enterprise carrying on the business of developing or maintaining and operating or developing, maintaining and operating any infrastructure facility. It is not in dispute that the works referred to above fall within the definition of infrastructure facility. It is also not in dispute that the assessee is not a company owned or registered in India or part of a consortium of such companies or that the operation or maintenance by the assessee has commenced after 1st April, 1995. All

that is being disputed is that the assessee has not itself entered into an agreement with the State Government for the purpose of developing or maintaining or operating the infrastructure facility, which as seen from the above work orders clearly is not the case. The work orders clearly name the assessee/consortium.

17. It cannot be disputed that the benefit of deduction can only be claimed by a person who executes the development by making investment and itself carrying out the work, and not by a works contractor. The assessee, as has been demonstrated by the work orders that have been issued directly to the assessee, has itself made the investments and carried out the work. The assessee has undertaken the risks involved in the project, invested its funds, deployed technical personnel, plant and machinery, and taken not only business risk but also entrepreneurial and investment risk. The assessee thus cannot be said to be a works contractor or a sub-contractor, but is a developer of the infrastructure facility who cannot be denied the benefit of deduction available under Section 80-IA(4) of the said Act, having itself received the work orders from the the Executive Engineer, Koyna Construction Division No. 1, Koynanagar, the Executive Engineer, Koyna Construction Division No. 2, Alore (Chiplun), and the Executive Engineer, Goshikhurd Right Bank Canal Division, Brahmapuri, District

Chandrapur.

18. All the conditions for claiming the said deduction having been complied with, the assessee cannot be denied the benefit of the said deduction.

19. The Commissioner (Appeals) has also observed that after completion of the project, the assessee has also undertaken maintenance of the project till the defect liability period as per the tender, and after finally completing the project in all respects, the project has been handed over to the State Government. The orders of the Tribunal also cannot be faulted.

20. In view of the aforesaid discussion, we do not find that there is any merit in these Appeals, and the Appeals deserve to be dismissed and are hereby dismissed.

21. The substantial question of law, as framed, is answered against the Revenue and in favour of the assessee.

22. The Appeals to accordingly stand disposed of as above. No costs.

[NEERAJ P. DHOTE, J.] **[ABHAY AHUJA, J.]**

VAIBHAV RAMESH JADHAV
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